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successor by merger to Bank One, NA*

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**IN THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF UTAH, CENTRAL DIVISION**

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KENNETH G. HANSEN, an individual, DAVID  
RUTTER, an individual, TODD FISHER, an  
individual, FIBERTEL, INC., a Utah  
corporation, K&D DEVELOPMENT, LC, a  
Utah limited liability company, and DOUGLAS  
A. SMITH, an individual

Plaintiffs,

vs.

MARC S. JENSON, an individual, MSF  
PROPERTIES, LC, a Utah limited liability  
company, BANK ONE, NA, a national banking  
association, MARK ROBBINS, an individual,  
MADTRAX GROUP, LLC, a Utah limited  
liability company, SPENCER BRANNAN, an  
individual, FIRST WASATCH  
DEVELOPMENT, INC., a Nevada  
corporation, and DOES 1-50,

Defendants.

**BANK ONE'S MOTION FOR  
SUMMARY JUDGMENT**

Case No. 2:04-CV-00867 TS  
Honorable Ted Stewart  
Magistrate Judge Brooke C. Wells

Pursuant to Rule 56 of the Federal Rules of Civil Procedure, Defendant JPMorgan Chase Bank, N.A., successor by merger to Bank One, NA (“Bank One”), moves this Court for summary judgment on the claims of Plaintiffs David Rutter, Todd Fisher, Fibertel, Inc., K&D Development, LC, and Douglas A. Smith’s (“Plaintiffs”) against Bank One.

This Motion is based on the following grounds:

1. There was no representation of a past or presently existing fact.
2. Any representations were not false.
3. Any reliance was unreasonable.
4. Bank One did not have the required pecuniary interest in the property transactions.
5. Bank One was not in a superior position to ascertain the facts.
6. Plaintiffs were not foreseeable recipients of the Bank One letters.
7. Any claim the K&D Plaintiffs might have had was extinguished by a subsequent agreement.
8. Plaintiffs failed to mitigate their damages.
9. No recovery can be had by the K&D Plaintiffs based on the indemnification agreement with Douglas Smith.

In addition to the above defenses, the claims of Smith have not been properly pled and should not be considered.

This Motion is supported by a Memorandum in Support of Bank One’s Motion for Summary Judgment that is filed herewith and the Exhibits thereto.

Bank One requests that summary judgment be entered in its favor on all claims of Plaintiffs against Bank One, that Plaintiffs’ Complaint be dismissed as to Bank One upon the merits, and Bank One be awarded its costs.

Dated: March 31, 2008

HOLLAND & HART LLP

/s/ John A. Beckstead

John A. Beckstead

H. Douglas Owens

Romaine C. Marshall

*Attorneys for JPMorgan Chase Bank, N.A.  
as successor by merger to Bank One, N.A.*

**CERTIFICATE OF SERVICE**

I hereby certify that on the 31st day of March, 2008, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which sent notification of such filing to the following::

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and I hereby certify that I have mailed by United States Postal Service the document to the following non-CM/ECF participants:

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/s/ John A. Beckstead